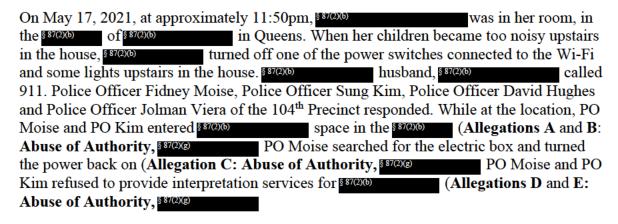
CCRB INVESTIGATIVE RECOMMENDATION

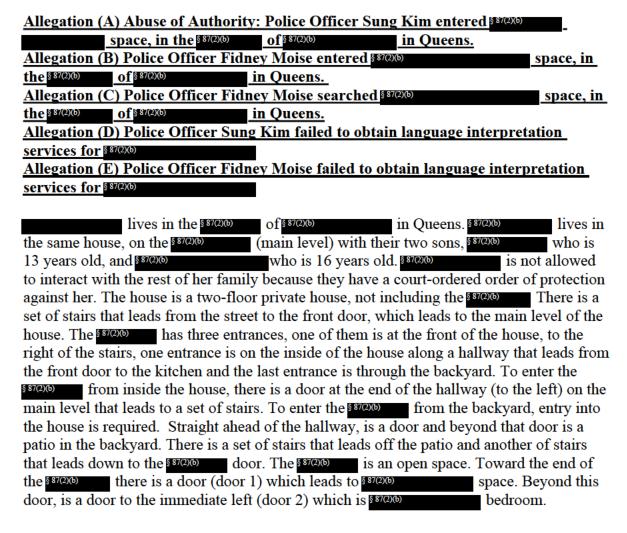
Investigator:		Team:	CCRB Case #:		Force		Discourt.	U.S.
Tileyah Williams		Squad #03	202103086	☑	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•		18 1	Mo. SO	OL	Precinct:
Monday, 05/17/2021 11:50 PM		§ 87(2)(b)			11/	/17/202	22	104
Date/Time CV Reported		CV Reported At:	How CV Reported		Date/Tin	ne Rece	eived at CC	RB
Thu, 05/20/2021 11:51 PM		CCRB	Call Processing System		Thu, 05/2	20/202	1 11:51 PM	I
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Sung Kim	27986	950683	104 PCT					
2. POM Fidney Moise	20130	962625	104 PCT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. PO David Hughes	13172	966109	104 PCT					
2. PO Jolman Viera	28028	965601	104 PCT					
3. SGT Daniel Cruz	05057	953791	104 PCT					
4. Nicholas Tush	10476	966373	104 PCT					
Officer(s)	Allegatio	on			Inv	vestiga	tor Recor	nmendation
A . POM Sung Kim		olice Officer Sung Kim	entered § 87(2)(b)					
	Queens.	space, in the § 87(2)(6)		in	1			
B . POM Fidney Moise		olice Officer Fidney Mo	oise entered § 87(2)(b)					
	Queens.	space, in the § 87(2)(b)		in				
C . POM Fidney Moise	Abuse: Popular Queens.	olice Officer Fidney Mo space, in the §87(2)(b)	oise searched § 87(2)(b)		in			
D . POM Sung Kim		olice Officer Sung Kim ation services for § 87(2)(6)	failed to obtain lang	guag	ge			
E . POM Fidney Moise	Abuse: Police Officer Fidney Moise failed to obtain language interpretation services for \$87(2)(6)							

Case Summary



The investigation obtained four body-worn camera videos (**01**, **02**, **03 Board Review**). Two of these videos are from Police Officer Nicholas Tush and Sergeant Daniel Cruz of the 104th Precinct who responded at some point during the incident.

Findings and Recommendations



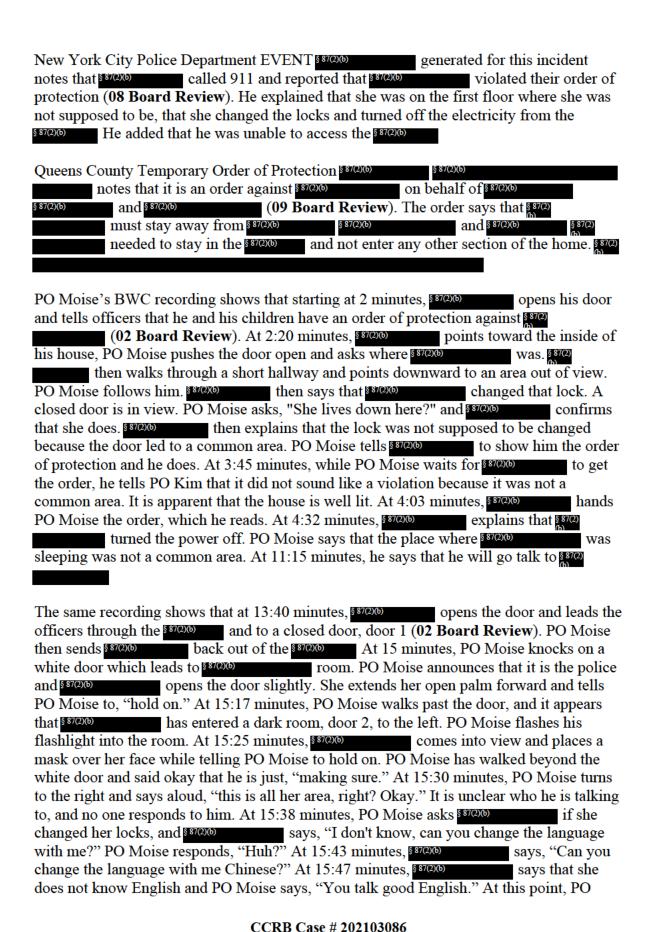
Immediately across from, and approximately two feet in front of door 2, is another door (door 3) which is where the circuit breaker box is. Doors 1-3 are part of living space.

testified that on May 17, 2021, at an unknown time, she was in her room
trying to sleep and she heard that her children were making loud noises upstairs (04 Board
Review). § \$7(2)(b) then turned off one of the switches in the circuit breaker. This
switch disconnected the modem for the internet and some lights upstairs, but she was not
sure which lights. §87(2)(b) knew that there were over ten switches in the circuit
breaker, so she knew that all the power did not turn off. She then went back into her room.
Soon after, 187(2)(a) heard the doorbell to the main level of the house ring and heard
talking in the room above hers with some voices unrecognizable to her 1970
could not hear what was said and only heard their voices. A few minutes later,
she heard loud banging on the sackyard entrance. She walked
toward the door and asked in English, "Who?" A voice then responded that it was the
police. \$87(2)(6) door and did not recall how wide she opened
the door but thought that she opened it wide enough for the officers to walk in.
then saw two police officers, PO Moise and PO Kim. PO Moise immediately
walked into the [87(2)(0)] and straight toward the circuit breaker box. He turned on the
switch that turned off. PO Kim also stepped into the with PO
Moise, but he only remained two steps into the speaking to speaking to face-
to-face. \$87(2)(6) and did not want the officers to go into her \$87(2)(6) and did not tell
them that they could. §\$7(2)(b) did not know whether the officers asked to go inside
of the second because she could not understand them and did not recall whether they said
anything prior to going in the second speaks Cantonese, though she can
understand and communicate simple English words and statements.
testified that as soon as she opened her \$87(2)(6) door, she was confused
and repeatedly asked in English, "What happened?" (04 Board Review). She did not
immediately know why the police were there. PO Kim began speaking but [887(2)]
did not understand what he was saying. [887(2)(6)] then said, "I need Chinese," and "I
need a Chinese translator." Both officers then told \$87(2)(6) that they knew that she
could understand English. They both said in English, "You're very good," "You know
English," and "You understand English." The officers then continued to speak English and
did not understand what they said. PO Moise and PO Kim did not speak
Cantonese and they did not get \$87(2)(6) a translator. \$87(2)(6) did not know
how many times she said, but she repeatedly told the officers that she needed a Chinese
translator. § \$7(2)(6) did not call the police and could not say for sure who did, but
she believed it was \$87(2)(6) because she heard him speaking to them. Eventually, the
officers went upstairs to \$87(2)(b) living area. At that point, \$87(2)(b) was so
angry that the officers arrived at her home and did not help her with the problem that she
was experiencing. [587(2)(b)] then walked up the stairs behind the officers and arrived
at the top step right before the entrance into the house. §87(2)(b) saw PO Moise and
PO Kim and again told the officers that she needed a Chinese translator. She then spoke a
lot of Mandarin words with the hopes that the officers would realize that she needed a
translator. [887(2)(6)] attempted to give the officers his iPad and [887(2)(6)] believed
that he was providing them with an online translator for her, but she could not see what was

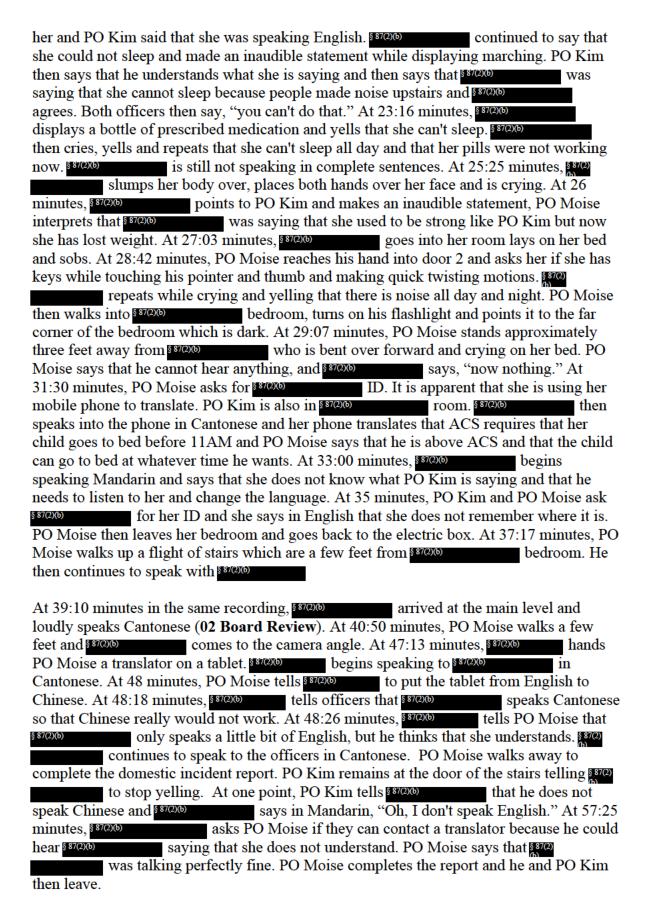
and went back downstairs. stated that the order of protection allowed § 87(2)(b) to live in the of the house, but that neither of them were allowed to change any of the locks to common spaces in the home (05 Board Review). Despite the rules of the order of protection, \$87(2)(b) changed the locks to all three doors that led to the \$87(2)(b) When she did this, § 87(2)(b) no longer had access to the electrical panel, water meter and gas meter that are all in the \$87(2)(b) The only way that \$87(2)(b) could get into is if he destroyed one of the doors at the three entrances. On the night of the incident, \$87(2)(b) realized that the Wi-Fi and some of the lights in house went out and noticed that streetlights were still on. He then called 911 and told them that \$87(2)(6) turned off the electricity and that he did not have access to the electrical panel. The officers then arrived approximately 5-10 minutes later. Officers arrived, he explained the issue to them, and told the officers that he felt that § 87(2)(b) violated their order of protection because she changed the locks to a common area. He showed the officers his order of protection, but the officers stated that there was no indication that the order was active since it had no expiration date. PO Kim and PO Moise then asked §87(2)(b) could gain access to the area where \$87(2)(b) was, and \$87(2)(b) told them about the entrance from his hallway inside of the house, and the one through the backyard. noted that PO Moise and PO Kim then asked \$87(2)(b) to lead them to the entrance through the backyard and he did (05 Board Review). §87(2)(b) then walked down the stairs that led to the \$87(2)(b) unlocked the first door which led into the and arrived at the second door which had been locked and controlled by \$87(2)(6) PO Moise and PO Kim then told § 87(2)(b) to go back in the house so that and he did so. As he was leaving, he heard he could remain separated from § 87(2)(b) the officers knocking and saying something in the nature of, "Open the door." §87(2)(6) did not see if or when the officers went into the second door of the \$87(2)(b) He could not hear what happened in the § 87(2)(b) stated that approximately ten minutes after he left the officers in the he heard § 87(2)(b) talking to the officers on the § 87(2)(b) Review). By then his power was back on (06 Board Review). §87(2)(6) say something in English but did not recall what she said (05 Board Review). He heard an officer say, "I know you can speak English" and something in the nature of her needing to be quiet and go back downstairs. He did not recall if and what else the officers said but knew that they were using simple English words. He heard [887(2)(b)] speaking in Mandarin and saying that she did not know anything that they were saying. [SS(2)] also asked for a translator, although § 87(2)(b) was not sure if this was in English or Mandarin. Neither of the officers spoke Mandarin. The officers did not get a translator for \$87(2)(b) Eventually \$87(2)(b) left. \$87(2)(b) said that he speak Cantonese to the officers on the § 87(2)(b) and that she was not proficient in English (07 Board Review). He also heard her repeatedly ask for a translator. §87(2)(b) then prepared his iPad with Google translate and walked to the hallway entrance to the \$87(2)(b) He handed it to one of the officers but did not remember if the officer used the iPad before handing it back to him.

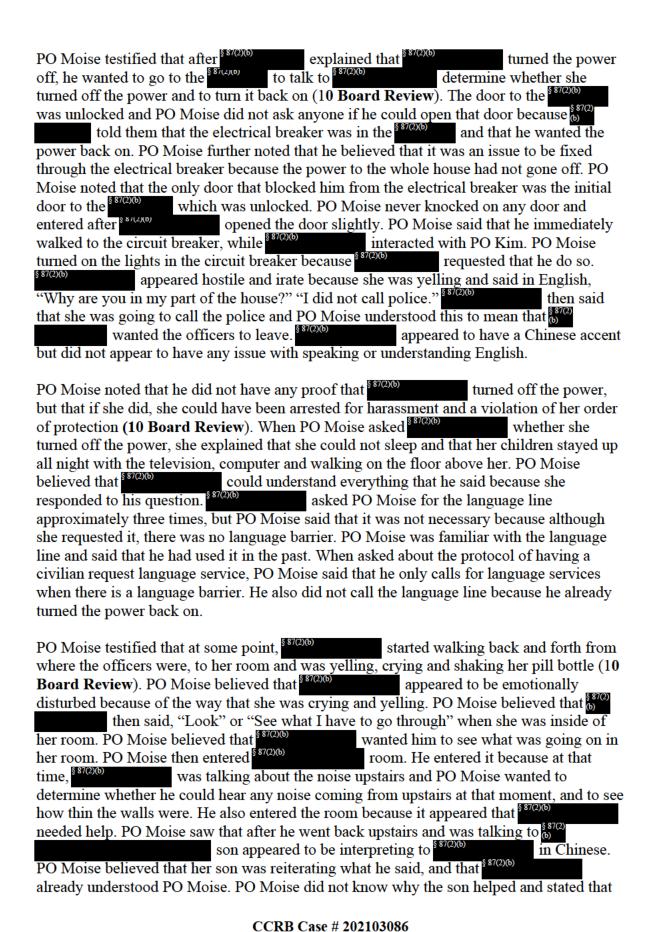
on the iPad. The officers did not take the iPad. Eventually \$87(2)(b)

closed the door



Kim and PO Moise have passed door 1 and are standing in front of door 2, talking to face to face. At 15:50 minutes, PO Moise says, "Lock, loc" and jiggles [870] doorknob on her bedroom door. He passes the threshold of door 2 to do this. PO Moise then speaks in broken sentences and asks, "You change?" \$\$7(2)(6) no, and PO Moise asks, "Long time?" §\$7(2)(6) repeats "Long time." At 15:57 minutes, PO Moise point out of view and asks, "this one," "you changed," "turned off power, upstairs?" At 16:02 minutes, \$87(2)(b) makes a motion of a phone and asks, "Can I?" PO Moise speaks over her and asks where the generator is, while walking further into the hall. He uses his flashlight to lead him into a closed door, door 3, and tells [8] to stay where she was. The same recording shows that at 16:12 minutes, PO Moise walks into door 3, which has electrical panels (02 Board Review). Service then says, "Excuse me, you tell me what happened and call Chinese, I don't know what happened." At 16:20 minutes, PO Kim says, "Your English is good." PO Moise says that \$87(2)(6) English is perfectly fine and that she was speaking good. PO Moise looks around the circuit breaker. At 16:58 minutes, § 87(2)(b) says in the background, "Sir, can you stop anything?" and PO PO Kim then tells § 87(2)(6) Moise advises PO Kim to talk to \$87(2)(6) they were just checking something. At 17:12 minutes, \$87(2)(6) says, "Okay he stop anything, you what happened, I don't know what happened, I call police." [887(2)0] uses short pauses in between her words. PO Kim then says that they (the police) are there, asks whether he could change the language for her. At 17:25 minutes, PO Moise starts pressing buttons and reading aloud "on." At 17:37 minutes, PO Moise tells either PO Viera or PO Hughes to check if the electric was on upstairs because he had just turned something on. PO Viera and PO Hughes never entered space. At 17:54 minutes, § 87(2)(b) has a phone held to her ear and says, "I need Chinese, too much the police here, but no change the language for me, I don't know what happened okay." She continues at 18:13 minutes to say, "My home have three police here, I don't know what happened, I tell him change the language for me but nothing." At 18:30 minutes, after PO Moise tells an officer that he turned something on, Marketon "Please don't go up, please go out, this my home okay." PO Kim says that he understands. then points at PO Kim and loudly tells him to tell her what happened. PO Kim asks why § 87(2)(b) is screaming and that he was going to tell her, and to relax. ■ tells PO Kim that she told him that she did not know At 18:53 minutes, § 87(2)(b) English and PO Kim says that she is talking to him in English. At 19 minutes, [870] said that she knew a little bit English and PO Moise chuckles and says that is doing fine. PO Moise is still beyond door 3, in front of the electrical panel box. At 19:16 minutes, § 87(2)(b) tells the 911 operator on speaker phone that she needs the language changed for her and the operator asks whether the police are at her house. PO Moise responds, "yes." \$87(2)(6) then explains to the operator that the police were there but that she did not call them. At 19:42 minutes, PO Moise said to the operator that he was from 104 Adam, and that he, "had it under control" and that was just being difficult. The operator then disengaged the call. At 20:22 minutes, PO Viera tells PO Moise that the power was on upstairs. At 20:30 minutes, PO Moise points at the electric box and says, "don't touch it." \$87(2)(6) told PO Moise to listen to her and PO Moise told her not to talk. At 21:31 minutes, §87(2)(6) standing in the doorway of door 2. She asks why the officers did not change to Chinese for





he did not interpret for the officers but appeared to provide additional information.

PO Kim's testimony was similar to that of PO Moise's (11 Board Review). He denied
walking right into strong bedroom door once she opened it. He said that strong bedroom door once she opened it.
never told the officers that she had difficulty understanding what they were
saying but she did request Chinese. PO Kim said that their policy for when civilians request
an interpreter was to call the language line. PO Kim did not call an interpreter because he
believed that understood what he was saying, since she answered his
questions in English. After started screaming and walking back and forth,
PO Kim went into her room, stood by the doorway, and asked if she wanted to go to the
hospital. said that she did not. He went into the room because said that she did not.
was acting irate and threw her pill bottle on the floor. PO Kim was concerned
for § 87(2)(b) safety.

Payton v. New York, 455 U.S. 573(1980) states that warrantless entries into premises are permitted under limited circumstances, including exigent circumstances, the emergency doctrine, hot pursuit, plain view doctrine and with voluntary consent (12 Board Review). Consent must be voluntary and given by someone with apparent authority of the premise. One of the limited exceptions to the warrant requirement and, indeed, to the requirement of probable cause, is voluntary consent to the search. Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. People v. Gonzalez, 39 N.Y.2d 122 (1976) (13 Board Review).

NYPD Patrol Guide Procedure 212-90 notes that when an officer encounters a limited English proficient individual, that they must determine the primary language of the individual and contact the language line or a certified Department interpreter (14 Board Review).

2 outs/IR
There was no evidence that the power that de-activated
created a safety hazard or other emergency. The only way that officers could have entered
the premises is with consent. [\$87(2)(6)] led the officers downstairs to the
where he had authority to authorize entry. However, \$87(2)(0) did not have authority to
provide consent to the officers to enter of the doors within street living space.
PO Moise admitted on BWC that \$87(2)(0) space was not a common area. \$87(2)
did not provide officers with consent to enter her living space. While the
officers were in \$87(2)(b) living space, she was yelling and crying.
had officers walking through her space, tampering with her electric box, she was unable to
understand what officers said, and she was not provided language services. When officers
entered her room, they reiterated that \$87(2)(0) could not turn her power off and
added that her children could sleep when they wanted to. \$87(2)(b) ability to give
informed and voluntary consent to enter her room was limited because she experienced a
language barrier. § 87(2)(g)

	speaking to her, she was unable to plete English statements to commu- ne officers for an interpreter and bot this to the officers as well. Howeve	make complete nicate with \$87(2) th \$87(2)(6)
 This is the first CCRB complaint Review). PO Kim has been a member-of-se complaint to which he has been a 	ervice for ten years and this is the f	
complaints and two allegations, r	none of which were substantiated.	
• As of February 25, 2022, the New	diation at the time that this complain w York City Office of the Comptrol parding this incident (16 Board Rev	ller has no record of
Squad: 3		
Investigator: <u>Tileyah Williams</u> Signature	Investigator Tileyah Williams Print Title & Name	09/01/2022 Date
Squad Leader: Rolando Vasquez Signature	IM Rolando Vasquez Print Title & Name	9/2/2022 Date